

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TINA LEE and ELLA LOUISE L. STANLEY

PLAINTIFFS

V.

CIVIL ACTION NO. 1:05CV550 LTS-JMR

**METROPOLITAN PROPERTY &
CASUALTY INSURANCE COMPANY, INC.**

DEFENDANT

ORDER DENYING MOTION TO DISMISS

The Court has before it Defendant Metropolitan Property & Casualty Insurance Company, Inc.'s (Metropolitan) motion to dismiss the complaint under F.R.Civ.P. 12(b)(6). Dismissal is proper only if, after accepting all of the material factual allegations of the complaint as true and after granting the plaintiff all reasonable favorable inferences based on these substantive allegations, the Court is satisfied that the plaintiffs can prove no facts in support of their claim which would entitle them to relief. Clearly that is not the case with respect of the claims of Plaintiff Tina Lee and Plaintiff Ella Louise L. Stanley.

Metropolitan's motion is based on its assertion that the plaintiffs seek only to recover for damage caused to the insured property by an excluded peril, i.e. water attributable to flooding. This is simply not the case. Plaintiffs allege that the damage to the insured property was caused by "hurricane wind, rain, adjoining structures pushed by the hurricane wind and/or storm surge from Hurricane Katrina." (Complaint Paragraph 16)

The question of which force or forces of nature caused or contributed to cause damage to the insured property is one of fact. I find that plaintiffs' claims are sufficient to proceed to the merits of this controversy and are not subject to dismissal under F.R.Civ.P. 12(b)(6).

Accordingly, it is

ORDERED

That the motion of Defendant Metropolitan Property & Casualty Insurance Company to dismiss [10] is hereby **DENIED**.

SO ORDERED this 23rd day of May, 2006.

s/ L. T. Senter, Jr.

L. T. Senter, Jr.
Senior Judge